



STATE OF NEW YORK  
DEPARTMENT OF HEALTH  
P.O. Box 11729  
Albany, NY 12211

## Notice of Decision

Decision Date: May 6, 2016

NY State of Health Account ID: [REDACTED]  
Appeal Identification Number: AP000000006174

[REDACTED]

Dear [REDACTED],

On May 2, 2016, you appeared by telephone at a hearing on your appeal of NY State of Health's December 21, 2015 eligibility determination.

The enclosed Decision, rendered after that hearing, is issued by the Appeals Unit of NY State of Health.

If you have questions about your Decision, you can contact us by:

- Calling the Customer Service Center at 1-855-355-5777
- Sending Mail to:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- Sending a Fax to 1-855-900-5557

When contacting NY State of Health about your appeal and/or the Decision, please refer to the Appeal Identification number and the NY State of Health Account ID at the top of this notice.

### Legal Authority

We are sending you this notice in accordance with 45 Code of Federal Regulations (CFR) § 155.545.

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## Decision

Decision Date: May 6, 2016

NY State of Health Account ID: [REDACTED] 1  
Appeal Identification Number: AP000000006174



## Issues

The issues presented for review by the Appeals Unit of NY State of Health are:

Did NY State of Health properly determine on December 20, 2015 that you and your spouse were eligible to purchase a qualified health plan at full cost effective January 1, 2016?

Should the amount of the advance payment of the premium tax credits stated in the January 13, 2016 eligibility redetermination notice be applied to the January 2016 premium for your health plan coverage that month?

## Procedural History

According to your NY State of Health account, in 2015, you and your spouse share in \$588.00 per month of advance payments of the premium tax credits and had health insurance coverage with Health Republic Insurance of New York, Inc. (Health Republic), from April 1, 2015 through November 30, 2015.

On October 24, 2015, NYSOH issued a renewal notice that stated a decision about whether or not you and your spouse qualified for financial assistance in 2016 could not be made and that you needed to update your NYSOH account before December 15, 2015 or the financial assistance you were currently sharing might end.

On October 30, 2015, NYSOH issued a letter informing you that Health Republic would no longer be able to offer health care coverage beginning December 1,

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2015 and that you needed to select a new health plan to maintain health care coverage for the month of December 2015 before November 15, 2015.

On November 4, 2015, NYSOH issued a disenrolled notice informing you that your health coverage with Health Republic would end November 30, 2015.

On November 9, 2015, your NYSOH account was updated.

On November 10, 2015, NYSOH issued an eligibility redetermination notice that in part stated you and your spouse were eligible to share in APTC of \$508.00 per month and eligible for cost sharing reductions, effective December 1, 2015.

That same day, NYSOH issued an enrollment notice confirming your and your spouse's December 1, 2015 enrollment in a Fidelis Care gold-level plan with a \$480.13 monthly premium after your monthly APTC of \$508.00 was applied.

On November 17, 2015, NYSOH issued a renewal notice that again stated a decision about whether or not you and your spouse qualified for financial assistance in 2016 could not be made and that you needed to update your NYSOH account before December 15, 2015 or the financial assistance you were currently sharing might end.

That same day, NYSOH issued two letters that informed you of the need to provide additional income documentation and proof regarding third party health insurance coverage for yourself.

No updates were made to your account after the November 17, 2015 renewal notice and letters were issued or before December 15, 2016.

On December 20, 2015, NYSOH preliminarily redetermined your and your spouse's eligibility for financial assistance for 2016.

On December 21, 2015, NYSOH issued an eligibility redetermination notice that in part stated you and your spouse were newly eligible to purchase a qualified health plan at full cost, effective January 1, 2016, because you no longer qualified for financial assistance since you did not respond to the renewal notice and did not complete your renewal within the required timeframe.

Also on December 21, 2015, NYSOH issued a disenrollment notice informing you that your and your spouse's coverage in your gold-level qualified health plan would end effective December 31, 2015. NYSOH also issued an enrollment notice confirming your and your spouse's enrollment in the same gold-level qualified health plan at full cost of \$1,029.64 monthly, effective January 1, 2016.

On January 12, 2016, you spoke with a representative from NYSOH's Account Review Unit and appealed the full cost redetermination because you were not

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told by your broker that you had to update your account for 2016 after updating it on November 9, 2015 for December 2015 and, as a result, your APTC was not applied in January 2016.

On January 13, 2016, NYSOH issued eligibility redetermination and enrollment notices indicating that you and your spouse were eligible to share in APTC of up to \$512.00 per month, which would be applied as of February 1, 2016, and you were both enrolled in a couple's gold-level plan with Fidelis Care as of January 1, 2016.

On May 2, 2016, you had a telephone hearing with a Hearing Officer from NYSOH's Appeal Unit. You submitted the account details from your Fidelis Care health plan during that hearing, which was made part of the record as "Appellant's Exhibit A." The record, having been fully developed during the hearing, was closed at the end of the hearing.

## **Findings of Fact**

A review of the record support the following findings of fact:

- 1) According to your NYSOH account, you and your spouse needed to update the information on your NYSOH account because your health insurer, Health Republic, was no longer able to offer health coverage through NYSOH after November 30, 2015.
- 2) On November 9, 2015, with the assistance of a broker, you updated your NYSOH account and reported that you and your spouse expect to file your 2015 federal income taxes as married filing jointly and would not be claiming any dependents on that return.
- 3) Also on November 9, 2015, you listed your expected annual income as \$35,749.00.
- 4) On November 10, 2015, NYSOH issued an eligibility redetermination notice that stated, based on your November 9, 2015 updated application, you and your spouse were eligible to share in APTC of \$508.00 per month and eligible for cost sharing reductions, effective December 1, 2015.
- 5) You testified that, since you updated your application on November 9, 2015, you did not realize that you had to update it again by December 15, 2015 for 2016.
- 6) According to your January 12, 2016 updated application, you and your spouse expect to file your 2016 federal tax return as married filing jointly and will claim no dependents. Your expected household income on that

application was listed as \$38,797.00. You testified that this information was correct.

- 7) According to the January 13, 2016 enrollment notice, the total monthly premium for you and your spouse is \$1,029.64, which after the monthly APTC amount is applied beginning February 1, 2016, equals \$517.64 as your monthly premium responsibility.
- 8) You submitted the account details from your Fidelis Care health insurance account that showed your premium amounts and payments as follows:

01/01/2016	521.64	0.00 balance
02/01/2016	1,537.64	0.00 balance
03/01/2016	5.64	0.00 balance
04/01/2016	517.64	0.00 balance
05/01/2016	517.64	494.36 balance after \$23.28 payment

- 9) You are seeking to have your monthly APTC of \$512.00 applied to your January 2016 monthly premium because it is otherwise unaffordable at full cost. According to the above account details, you were invoiced for the full cost on February 1, 2016,

Conflicting evidence, if any, was considered and found to be less credible than the evidence noted above.

## **Applicable Law and Regulations**

### Annual Eligibility Redetermination

Generally, NYSOH must conduct annual eligibility redeterminations for qualified individuals who are seeking financial assistance through insurance affordability programs for the upcoming year, such as tax credits and cost-sharing reductions, Medicaid, or Child Health Plus. In such cases, NYSOH is required to request that the qualified individual provide updated income and family size information for use in an eligibility redetermination for the upcoming year (see 45 CFR § 155.335(a) and (b)).

NYSOH must send an annual renewal notice that contains the information that it will use to redetermine a qualified individual's eligibility for that year (45 CFR § 155.335(c)(3)). The notice must allow a reasonable amount of time for the qualified individual to respond and for NYSOH to implement any changes that the individual has elected (45 CFR § 155.335(d)(2)(ii)). If a qualified individual does not respond to the notice after a 30-day period, NYSOH must redetermine that individual's eligibility using the information provided in the annual renewal notice

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(45 CFR § 155.335(h)(i)). NYSOH must ensure this redetermination is effective on the first day of the coverage year (45 CFR § 155.335(i)).

### Redetermination During a Benefit Year

When a redetermination is issued as a result of a change in an applicant's information, NYSOH must generally make that redetermination effective on the first day of the month following the date it is notified of the change (45 CFR § 155.330 (f)(1)(ii)). However, NYSOH may adopt a policy that any change made after the 15<sup>th</sup> of any month will not be effective until the first of the next following month (45 CFR § 155.330 (f)(2)), and it has elected to do so (13 OHIP/ADM-03).

When an eligibility redetermination results in a change in the amount of advance premium tax credit (APTC) for the benefit year, NYSOH must recalculate the amount of APTC in such a manner as to account for any advance payments already made on behalf of the tax filer, such that the recalculated advance payment amount is projected to result in total advance payments for the benefit year that correspond to the tax filer's total projected premium tax credit for the benefit year (45 CFR § 155.330(g)).

### End of Tax Year Reconciliation

At the end of a tax year, a person who elects to take the advance premium tax credit to help pay for the cost of an insurance premium must file a tax return to reconcile any differences between the amount of income the person reported to NYSOH and their actual gross income for that year. A person who received less tax credit than his or her maximum entitlement, based on gross income, may receive an income tax refund, or owe less in taxes. A person who received more tax credit than his or her maximum entitlement, based on gross income, will owe the excess as an additional income tax liability (26 CFR § 1.36B-4).

## **Legal Analysis**

The first issue is whether NYSOH properly determined that you and your spouse were eligible to enroll in a qualified health plan at full cost effective January 1, 2016.

NYSOH must redetermine qualified individuals' eligibility for health insurance and financial assistance to help pay for that health insurance annually.

NYSOH must issue a renewal notice that contains the information that it will use to determine individuals' eligibility. If then individuals do not respond to this notice, NYSOH must issue an eligibility determination for the upcoming coverage year based on the information contained in the renewal notice.

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On November 17, 2015 after you had updated your NYSOH account on November 9, 2015, NYSOH issued a renewal notice that contained information about your and your spouse's annual eligibility redetermination. That notice stated that based on information from federal and state sources, NYSOH could not make a decision about whether or not you both qualified for financial help paying for your health coverage for 2016. You were asked to update the information in your NY State of Health account by December 15, 2015 or the financial assistance you both shared might end. Also on November 17, 2015, NYSOH issued two letters that informed you additional income information was still needed and you needed to provide proof of third party health insurance for yourself.

The record reflects that you and your spouse received APTC in 2015.

You testified that you assumed by updating your NYSOH account on November 9, 2015, you did not need to do anything further. You also testified that the broker did not inform you that you would need to again update your account for 2016 renewal.

By December 15, 2015, your NYSOH account did not contain the required updated information you were notified to provide on November 17, 2015. Therefore, NYSOH was required to use the information that was contained in the November 17, 2015 renewal notice in order to determine your and your spouse's eligibility for coverage beginning January 1, 2016. Since your household income could not be verified, on December 20, 2015, NYSOH issued a notice that stated you and your spouse were newly eligible to purchase a qualified health plan at full cost effective January 1, 2016.

The notice further stated that you and your spouse were not eligible to receive advance payments of the premium tax credit because you had not updated your application for renewal and income data was not available. This finding was necessitated by the federal regulations noted above and, therefore, NYSOH's December 21, 2015 eligibility redetermination notice is AFFIRMED.

The second issue under review is whether or not the APTC amount listed in the January 13, 2016 eligibility redetermination notice should be applied to the premium amount for January 2016. Initially, APTC generally cannot be applied retroactively.

On December 22, 2015, NYSOH issued an enrollment notice confirming that you and your spouse were enrolled in a couple's gold-level qualified health plan with Fidelis Care, effective January 1, 2016, and had a premium responsibility of \$1,029.64.

The record reflects that on January 12, 2016, you again updated the information in your NYSOH account. This resulted in a January 13, 2016 eligibility



redetermination notice that stated you and your spouse were newly eligible to share in up to \$512.00 in APTC, effective February 1, 2016. When an individual changes information in their application before the 15th of any month, NYSOH must make the redetermination that results from that change effective the first day of the following month. Therefore, NYSOH's January 13, 2016 eligibility redetermination notice was correct in finding that you and your spouse were not eligible for APTC in January 2016, strictly adhering to federal regulations.

In addition, the January 13, 2016 enrollment notice that stated your premium would be \$517.64 after your monthly APTC of \$512.00 was applied beginning February 1, 2016, which also confirmed you were both enrolled in the gold-level qualified health plan as of January 1, 2016 at full cost of the premium of \$1,029.64, was correct. You testified and submitted your Fidelis Care account details to support that you paid your portion of the premium after APTC for January 2016 coverage to start. According to those same account details, it appears that Fidelis Care adjusted your February 1, 2016 premium amount to account for the full cost of premium for January 2016, which you paid in full.

However, when APTC is recalculated mid-year, NYSOH is required to prorate monthly amounts to reflect APTC that has already been received and to ensure that the APTC you receive during the year is as close as possible to the overall tax credit you will be entitled to when you file your taxes for the 2016 tax year. It appears in your case that NYSOH did not do this. Instead, it simply found you and your spouse eligible for the monthly amount to which you would have been entitled had you received APTC for the entire 12 months of the year.

Therefore, the January 13, 2016 eligibility redetermination notice is MODIFIED to state you and your spouse are newly conditionally eligible to receive APTC effective February 1, 2016, at only a *tentative* rate of \$512.00 per month.

Your case is RETURNED to NYSOH to recalculate the amount of APTC to which you and your spouse are eligible for the 11 months of the year for which you received (or will receive) APTC, by dividing your annual expected tax credit by 11 months of 2016, instead of 12 months. The amount of APTC to which you are entitled may increase prospectively on a pro rata basis. NYSOH will notify you accordingly.

## **Decision**

The December 22, 2015 notices of eligibility redetermination notice and enrollment are AFFIRMED.

The January 13, 2016 notices of eligibility redetermination and enrollment are MODIFIED to reflect that you and your spouse are tentatively entitled to up to \$512.00 per month in APTC, effective February 1, 2016.

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Your case is RETURNED to NYSOH to recalculate the amount of APTC to which you and your spouse are eligible for the 11 months of the year for which you received (or will receive) APTC, by dividing your annual expected tax credit by 11 months of 2016, instead of 12 months. The amount of APTC to which you are entitled may increase prospectively on a pro rata basis. NYSOH will notify you accordingly.

**Effective Date of this Decision:** May 6, 2016

### **How this Decision Affects Your Eligibility**

You and your spouse were eligible to enroll in a QHP at full cost, effective January 1, 2016, and were enrolled in your gold-level QHP, effective January 1, 2016.

You and your spouse are tentatively eligible to share up to \$512.00 in APTC effective February 1, 2016; this amount may change depending on NYSOH's mid-year recalculation.

### **If You Disagree with this Decision (Appeal Rights)**

This Decision is final unless you submit an appeal request to U.S. Department of Health and Human Services or bring a lawsuit under New York Civil Practice Law and Rules, Article 78.

You may bring a lawsuit on any Appeals Unit decision in New York State court in accordance with Article 78 of the New York Civil Practice Law and Rules. This must be done within four months after the Decision Date, which appears on the first page of this Decision.

Additionally, Appeals Unit decisions on issues involving eligibility for qualified health plans, advance premium tax credits, and cost-sharing reductions may be appealed to the U.S. Department of Health and Human Services. This must be done within 30 days of the Decision Date, which appears on the first page of this Decision (45 CFR § 155.520(c)).

If you wish to be represented by an attorney in bringing an outside appeal and do not know how to go about getting one, you may contact legal resources available to you. You may, for example, contact the local County Bar Association, Legal Aid, or Legal Services.

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## **If You Have Questions about this Decision (Customer Service Resources):**

You can contact us in any of the following ways:

- By calling the Customer Service Center at 1-855-355-5777
- By mail at:  
NY State of Health Appeals  
P.O. Box 11729  
Albany, NY 12211
- By fax: 1-855-900-5557

## **Summary**

The December 22, 2015 notices of eligibility redetermination notice and enrollment are AFFIRMED.

The January 13, 2016 notices of eligibility redetermination and enrollment are MODIFIED to reflect that you and your spouse are tentatively entitled to up to \$512.00 per month in APTC, effective February 1, 2016.

Your case is RETURNED to NYSOH to recalculate the amount of APTC to which you and your spouse are eligible for the 11 months of the year for which you received (or will receive) APTC, by dividing your annual expected tax credit by 11 months of 2016, instead of 12 months. The amount of APTC to which you are entitled may increase prospectively on a pro rata basis. NYSOH will notify you accordingly.

You and your spouse were eligible to enroll in a QHP at full cost, effective January 1, 2016, and were enrolled in your gold-level QHP, effective January 1, 2016.

You and your spouse are tentatively eligible to share up to \$512.00 in APTC effective February 1, 2016; this amount may change depending on NYSOH's mid-year recalculation.

## **Legal Authority**

We are issuing this determination in accordance with 45 CFR § 155.545.

**A Copy of this Decision Has Been Provided To:**

